

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SEVENSON ENVIRONMENTAL SERVICES, INC.,

Plaintiff,

v.

DECISION AND ORDER
02-CV-527A

SHAW ENVIRONMENTAL, INC.,

Defendant.

By Order dated March 22, 2006, the Court granted the motion of defendant Shaw Environmental, Inc. ("Shaw"), for summary judgment on its government contractor immunity defense under 28 U.S.C. § 1498. The Court's Order, however, did not address Shaw's pending counterclaims based on invalidity of the patents. Judgment was filed in favor of defendant Shaw on March 24, 2006.

Plaintiff Severson Environmental Services, Inc. ("Severson"), now moves, pursuant to Rules 54(b) and 58 of the Federal Rules of Civil Procedure, to amend the March 24th judgment so as to indicate that the judgment addresses fewer than all of the claims pending in the case. Otherwise, the Federal Circuit Court of Appeals will lack jurisdiction over Severson's appeal of the Court's March 22nd Order until all claims in the case, including Shaw's counterclaims, have been resolved.

In its response to Severson's motion, Shaw agrees to either (1) the entry of final judgment on all claims asserted by Severson and the dismissal of Shaw's counterclaims without prejudice to Shaw refiling its counterclaims if Severson's appeal

is successful, or (2) the entry of final judgment on all of Severson's claims under Rule 54(b), with Shaw's counterclaims stayed pending final disposition of Severson's appeal.

After reviewing the submissions of the parties, the Court hereby orders the entry of final judgment in favor of Shaw on all claims asserted by Severson and the dismissal of Shaw's counterclaims without prejudice to Shaw refiling its counterclaims if Severson's appeal is successful. The Clerk of Court shall file an amended judgment in accordance with this Decision and Order.

IT IS SO ORDERED.

/s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: May 11 , 2006